

REMARKS

This submission is in response to the Office Action dated March 19, 2004. Claims 1-11, 28, 39, and 40 are pending in this application. Applicant appreciates the Examiner's acceptance of the Applicant's remarks with respect to the Walker reference.

The Examiner, however, raised a new §102(b) rejection based on based on a previously considered reference: U.S. Patent 4,853,521 to Claeys et al. *See*, Office Action of March 27, 2002 and Responses of July 19, 2002 and January 13, 2003. Essentially the Examiner now concludes that the bar-coded containers (vials or ampules) of Claeys, when positioned on the tray, satisfy the claimed "coded substance site of the present invention." Applicant respectfully disagrees with this conclusion for at least the following reasons.

The bar-coded containers in Claeys are "carriers" not "sites" in the terminology used in the claims. Thus, Claeys discloses at least two types of coded carriers, i.e., the containers and the syringes, but Claeys does not disclose a coded site.

The containers are not sites because they can be placed anywhere on the tray, in any desired order, can be removed from the tray, and the arrangement of containers on the tray can be changed at any time. Further, in the normal course of use for drug administration, the container is removed from the tray at least in order to load the syringe. For example, if the container is put in the wrong place, the syringe will also be in the wrong place. Thus, the containers of Claeys cannot be coded sites of the invention.

Claeys teaches scanning the barcodes on the container or syringe to verify that they are the same, i.e., that the syringe is the right one for the container. Col. 1, lines 32-34; col. 2, lines 63-65; col. 3, lines 56-59. The syringe is loaded with drug in the container, and consequently is also a drug carrier, it is not a coded site either. At most, Claeys shows two coded containers or drug carriers, but still does not show, suggest, describe or motivate a coded site, e.g. on a tray.

Finally, Claey's does not address the problem of accidentally placing the containers on the tray in the wrong sequence during setup, or of making a mistake in the sequence at any later time. In Claey's there is no code on the tray to compare with the code on either the container or the syringe. Not only is there no motivation in Claey's to treat the bar-coded vials or ampules as codes on the tray, the tray is immaterial to the Claey's system for verifying and recording drug administration. In contrast, the claimed invention requires a predetermined coded substance site. In Claey's, all of the coded structures are containers or drug carriers; they are moveable with respect to each other and with respect to any tray on which they are placed. In contrast, the claimed "site" is a place or location. Coding or labeling the site, in addition to any moveable containers, provides a cross-check and safety measure which the prior art does not suggest or describe.

In view of these remarks, Applicant submits that the claims are in condition for allowance and requests that the Examiner withdraw the final rejection.

It is believed that no additional fee is due. However, the Commissioner is hereby authorized to charge Deposit Account No. 04-0100 for any deficiency.

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Respectfully submitted,

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